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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re M.W., a Person Coming Under the  
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

M.W.,

Defendant and Appellant.

A156132

(Contra Costa County  
Super. Ct. No. J1800844)

Appellant M.W. was reported missing and located by a police officer who drove her to the police station so she could be picked up by her guardian. During the ride, M.W. repeatedly threatened to fight the officer, and was as a result placed under arrest. The juvenile court sustained a wardship petition alleging that M.W. had interfered with an executive officer in the performance of her duties. M.W. argues that there was insufficient evidence of her specific intent to cause such interference. We affirm.

**BACKGROUND**

Richmond police officer Lacquanna Caston's normal duties include locating runaway juveniles and returning them to their parent or guardian, and at approximately 2:30 p.m. on September 12, 2018, she was dispatched to an address in Richmond in response to a report that then 14-year-old appellant M.W. was such a runaway. Caston located M.W., informed her that she was going to take her to the police station where her

guardian would pick her up, searched her for weapons and contraband, and placed her in the back seat of her patrol vehicle, separated from the driver's seat area by a plastic barrier. Caston then began the approximately 10 minute drive to the police station.

As Caston drove to the police department, she heard M.W. speaking on her cell phone, referring to Caston as a "bitch." Caston then asked M.W. "why are you using profanity? I don't even know you." M.W. told Caston "Bitch, stop talking to me," "I don't give a fuck," and "I don't care." Caston replied that M.W. was being "disrespectful," that she was "just doing [her] job," and that "you're having issues with your mom and you're taking it out on me." M.W. said "Watch when we get out this fucking car, I don't give a fuck about beating her ass" and "I'll beat the fuck out you when we get out this car." Caston replied "Oh ok, we can try it" and "Oh please, wait til we get to the station . . . we're almost there." M.W. went on to say "You think you all that 'cause you got a badge, bitch. I will molly wop you, bitch," to which Caston responded "I will take this badge off, honey . . . it has nothing to do with anything." M.W. continued her phone conversation: "No. Bitch. They're trying to have me stay there 'til my mom gets there and best believe when she do pick me up, bitch, best believe I'm not fucking staying there so I don't know what the fuck they're doing this for. Best believe I'm fixing to hop on BART and I'm fixing to go to Nina's house, best believe and I don't give a fuck. Bitch, yes you can hear me, bitch. Like, I don't care."

After M.W. told Caston to "[g]et out the car," Caston replied "Hold on. [¶] . . . [¶] We're almost to the police department, I can't do it in the middle of the road." M.W. responded: "Bitch, you can't fight by yourself? You can't fight by yourself? Just hop out. Hop out, bitch." She went on: "Get the fuck out, let's see what that badge does for you, you fucking whore," to which Caston replied "Honey, I'm so sorry you have mental issues" and "are you on any type of medication that I should be aware of?" while M.W. said "And let them take me to jail for putting my hands on you, you little bitch!"

Shortly afterward, the vehicle arrived at the station, and Caston said "We're about to get out and start fighting right now" and "are we gonna get out and fight right now?"

Let's go fight. Let's go fight." She also told someone outside the car: "I got a heated one in the car that wants to beat me up, so we're about to go fight in the back."

Because of M.W.'s threats, Caston arranged to have additional officers help her escort M.W. from the vehicle. Another officer told M.W.: "You're not under arrest right now, we're just waiting for your mom. But what's gonna happen is you need to get out the car." M.W. then said: "And I'll beat the fuck out her when she come here." The officer responded: "Okay, we can't be . . . You're not gonna do that." M.W. replied: "Oh, yes I can. I bang it. For surely will." Another officer told M.W.: "You ain't under arrest, you ain't in trouble. Just go along with the program. We'll get you back home." M.W. responded: "I'ma beat the fuck out her." As M.W. walked toward the station, Caston said "Wow, there's no fighting. I'm surprised." M.W. responded "Bitch, best believe I'll fucking bang your ass into the concrete" and "Right when I get out the car, this bitch has something to say. God, before I bang your head into the fucking concrete you little whore." Because of M.W.'s threats against Caston and against her guardian, she was ultimately placed under arrest.

On September 14, the Contra Costa County District Attorney filed a juvenile wardship petition (Welf. & Inst. Code, § 602, subd. (a)) charging M.W. with one misdemeanor count of resisting an executive officer in the performance of her duties (Pen. Code, § 69).

A contested jurisdictional hearing was held on November 19 and 21, at which Officer Caston was the only witness. The court also admitted into evidence a recording of the incident from Caston's body camera as the Minor's Exhibit A.<sup>1</sup> At the conclusion of the hearing, M.W.'s counsel moved for an acquittal pursuant to Welfare and Institutions Code section 701.1 and the juvenile court continued the hearing in order to

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<sup>1</sup> We have reviewed the video, which is part of the record on appeal. By letter dated March 5, 2019, M.W.'s counsel provided this court with a copy of a transcript of the video, which was not marked or entered into evidence before the juvenile court. We have referred to the transcript only to clarify certain statements made in the video.

review the motion.<sup>2</sup> On November 21, the court heard argument and denied the motion. The court then sustained the petition.

At the dispositional hearing on December 5, the court adjudged M.W. a ward of the court, ordered her placed on home detention for 60 days, and placed her on probation with various terms and conditions.

## DISCUSSION

M.W. argues that the juvenile court erred in denying her motion under Welfare and Institutions Code section 701.1 because substantial evidence does not support her conviction, and that her words were protected speech under the First Amendment.

“[T]he standard for review of the juvenile court’s denial of a [Welfare and Institutions Code section 701.1] motion to dismiss is whether there is substantial evidence to support the offense charged in the petition.” (*In re Man J.* (1983) 149 Cal.App.3d 475, 482; *In re Anthony J.* (2004) 117 Cal.App.4th 718, 727.) “ ‘On appeal we review the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find [the allegations to be true] beyond a reasonable doubt.’ ”<sup>3</sup> (*People v. Jones* (2013) 57 Cal.4th 899, 960.)

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<sup>2</sup> Welfare and Institutions Code section 701.1 provides: “At the hearing, the court, on motion of the minor or on its own motion, shall order that the petition be dismissed and that the minor be discharged from any detention or restriction therefore ordered, after the presentation of evidence on behalf of the petitioner has been closed, if the court, upon weighing the evidence then before it, finds that the minor is not a person described by Section 601 or 602. If such a motion at the close of evidence offered by the petitioner is not granted, the minor may offer evidence without first having reserved that right.”

<sup>3</sup> M.W. argues that we should independently review the record to determine whether her words were protected by the First Amendment, relying on *In re George T.* (2004) 33 Cal.4th 620 (*George T.*) and *In re Ernesto H.* (2004) 125 Cal.App.4th 298 (*Ernesto H.*). In *George T.*, the Supreme Court applied independent review to the question of whether a poem containing the phrase “I can be the next kid to bring guns to kill students at school” satisfied the third element of Penal Code section 422—that it was “ ‘so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat.’ ”

Penal Code section 69, subdivision (a) makes it a criminal offense to “attempt[], by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed upon the officer by law . . . .” “The statute sets forth two separate ways in which an offense can be committed. The first is attempting by threats or violence to deter or prevent an officer from performing a duty imposed by law; the second is resisting by force or violence an officer in the performance of his or her duty. (*In re M.L.B.* (1980) 110 Cal.App.3d 501, 503.)” (*In re Manuel G.* (1997) 16 Cal.4th 805, 814.)

“[A] violation of section 69 through a threat ‘requires a specific intent to interfere with the executive officer’s performance of his duties.’ ” (*People v. Sivongxxay* (2017) 3 Cal.5th 151, 195, quoting *People v. Gutierrez* (2002) 28 Cal.4th 1083, 1153; see *People v. Rasmussen* (2010) 189 Cal.App.4th 1411, 1418–1420; CALCRIM 2651 [violation of Penal Code section 69 requires: “1. The defendant willfully and unlawfully used (violence/ [or] a threat of violence) to try to (prevent/ [or] deter) an executive officer from performing the officer’s lawful duty; AND 2. When the defendant acted, (he/she) intended to (prevent/ [or] deter) the executive officer from performing the officer’s lawful duty”].)

M.W. argues that there was insufficient evidence of her specific intent to interfere with Caston’s duties, pointing out that she cooperated with Caston initially, that she at no

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(*George T.* at p. 630.) *Ernesto H.* applied independent review to the question of whether the statement “ ‘Yell at me again and see what happens’ ” was a “threat to inflict an unlawful injury” within the meaning of Penal Code section 71, but applied the substantial evidence test to the further question of whether the defendant had the “ ‘intent to influence the performance of the officer or employee’s official duties.’ ” (*Ernesto H.* at pp. 308–314.) In this case, M.W.’s words were not ambiguous—there is no question that they were threats of violence and the only dispute is whether M.W. had the requisite specific intent when she spoke them. Accordingly, we will apply the substantial evidence standard of review. (See *Ernesto H.*, *supra*, 125 Cal.App.4th at pp. 308, 313–314; *People v. Lopez* (2015) 240 Cal.App.4th 436, 447 [“if independent review is appropriate, it is applicable only to issues that could implicate the First Amendment, such as the content of appellant’s communications; sufficiency of the evidence to support the jury’s finding on intent is determined according to the usual substantial evidence standard”].)

point exhibited any physical aggression, and that Caston did not take her threats seriously.

In order to sustain the petition, the juvenile court had to find that at the time she made her threats, M.W. had the specific intent to prevent Caston from transporting her to the police station and reuniting her with her guardian. Although we view this a somewhat close case, viewing the entire record in the light most favorable to the judgment, we conclude that substantial evidence supports the conclusion that M.W. had the requisite intent. During the car ride, M.W. repeatedly expressed that she did not want to be returned to her guardian, saying on her phone call that she would not stay with her aunt and would instead take BART to “Nina’s” house. Immediately after Caston explained that it was her job to take M.W. back to her guardian, M.W. threatened her over and over, telling her to “hop out” and “get out” of the car, that she would “molly wop” her, “beat the fuck out you when we get out this car,” and “let them take me to jail for putting my hands on you, you little bitch.” And M.W.’s threats served their intended purpose: Caston had to obtain the help of additional officers to escort her into the station, and ultimately arrested her and booked her into juvenile hall instead of returning her to her guardian.

In arguing that the evidence was insufficient, M.W. notes that, in contrast to certain of the cases relied on by the Attorney General, M.W. did not use physical force or violence of any kind. (See *People v. Iboa* (2012) 207 Cal.App.4th 111, 120 [defendant told firefighters to “get the fuck off his property,” violently threw firehose out of his backyard, confronted captain with a “puffed-chest,” showed off gang tattoos, and clenched his fists, such that officers thought “violence was imminent”]; *People v. Sivongxxay* (2017) 3 Cal.5th 151, 196 [defendant repeatedly yelled “ ‘I’ll remember you’ ” while standing three feet away from officer with his fists clenched in a “ ‘combative stance’ ” that officer perceived as “ ‘very hostile’ ”].) But the statute criminalizes even threats unaccompanied by any violence. (See *In re Manuel G.*, *supra*, 16 Cal.4th at p. 814 [“A threat, unaccompanied by any physical force, may support a conviction for the first type of offense under section 69”]; *id.* at 811 [threat that minor

was “ ‘going to start knocking you guys off’ ”]; *People v. Hines* (1997) 15 Cal.4th 997, 1060 [“But a present ability to carry out threats is not required if, as here, the target of the threat could reasonably fear retaliatory action on some future occasion”].)

M.W. also points to the facts that Caston was clearly not afraid of M.W. based on her threats, was at times laughing during the car ride, joked with other officers about M.W.’s threats, and taunted M.W. about her “mental issues.” But “a defendant’s threat may violate section 69 even if the officer who is the object of the threat does not in fact fear that it will be carried out.” (*People v. Hines, supra*, 15 Cal.4th at p. 1061 fn. 15; *People v. Hamilton* (2009) 45 Cal.4th 863, 936 [“section 69 does not require a showing that [the victim] took the threats seriously or felt threatened”]; *People v. Gutierrez* (2002) 28 Cal.4th 1083, 1153 [“a violation of section 69 does not require a showing of the state of mind of the recipient of the threat”].)

*In re Ricky T.* (2001) 87 Cal.App.4th 1132 (*Ricky T.*), on which M.W. relies, is distinguishable. In that case, the defendant—a 16-year-old high school student—left his classroom to use the bathroom and found the door locked when he returned. (*Id.* at p. 1135.) He pounded on the door, and his teacher opened it, hitting defendant in the process. (*Ibid.*) Defendant then cursed at his teacher and threatened him saying: “ ‘I’m going to get you.’ ”<sup>4</sup> (*Ibid.*) A wardship petition was filed alleging that defendant made a terrorist threat in violation of Penal Code section 422, which required as its third element that “the threat, on its face and under the circumstances in which it was made, was so unequivocal, unconditional, immediate and specific as to convey to the person threatened a gravity of purpose and an immediate prospect of execution of the threat.” (*Id.* at p. 1136; Pen. Code § 422.) The juvenile court sustained the petition. (*Ricky T.* at p. 1134–1135.)

The *Ricky T.*, *supra*, 87 Cal.App.4th 1132, court reversed, first noting that threats must be considered in context, and observing that the “lack of surrounding circumstances information [was] striking.” (*Id.* at p. 1137.) In particular: there was “no immediacy to

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<sup>4</sup> The defendant later told police that he had said “ ‘I’m going to kick your ass.’ ” (*Id.* at p. 1136.)

the threat,” the police were not called until the following day, defendant’s statement was a “vague threat of retaliation without prospect of execution,” there was no evidence of a history of disagreements nor of the prospect of an imminent physical confrontation or any show of physical violence, and the remarks “hardly suggest[ed] any gravity of purpose.” (*Id.* at pp. 1137–1139.) The court concluded that there was insufficient evidence to establish the third element. (*Id.* at p. 1139.)

*Ricky T.*, *supra*, 87 Cal.App.4th 1132, is unlike the situation here. *Ricky T.* relied on the language of Penal Code section 422, which requires “a gravity of purpose” and the “immediate prospect of execution of the threat,” requirements not found in Penal Code section 69. (*Ricky T.* at pp. 1137–1139.) In addition, the minor in *Ricky T.* made a single “outburst” as an “emotional response to an accident.” Here, M.W. repeatedly threatened Caston over a period lasting some 20 minutes, both before and after arriving at the police station. (*Id.* at pp. 1140–41.)

In sum, substantial evidence supports the juvenile court’s conclusion that M.W. had the requisite intent and violated Penal Code section 69.

#### **DISPOSITION**

The juvenile court’s order is affirmed.



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Richman, J.

We concur:

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Kline, P. J.

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Miller, J.

*People v. M.W.* (A156132)